IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2006

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P.No.19818/2006 & M.P.No.1/2006

Indoria Traders,
represented by its Proprietor,
Arun Kumar Indoria,
96/A7, Village Street, Sathangadu,
Chennai 600 019. .. Petitioner

Vs

1.Tamilnadu Electricity Board,
represented by its Chief Financial Controller,
NPKRR Maaligai,
800 Anna Salai, Chennai 600 002.

2.The Chief Engineer,
North Chennai Thermal Power Station,
Tamilnadu Electricity Board,
Chennai 600 120.

3.K.M.Enterprises,
No.67 M.K.N.Road, Guindy, Chennai 600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 herein to accept the tender of the petitioner being the highest offer also in respect of lot numbers 15,16 and 19 of Tender Notification No.CE/NCTPS/39/2006-2007 dated 25.5.2006 after rejecting the tender offered by the 3rd respondent on the ground that condition No.6(d) of the Conditions was not fulfilled.

For Petitioner : Mr.Doraiswami SC for
Mr.Kandavadivel Doraisami
For Respondents: Mr.R.Subbiah for R1 & R2
Mr.K.M.Vijayan, Senior Counsel for
M/s.Ahmed Associates for R3

ORDER

The prayer in the writ petition is to direct the respondents 1 and

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2 to accept the tender of the petitioner being the highest offer in respect of lot numbers 15,16 and 19 of Tender Notification dated 25.5.2006 after rejecting the tender offered by the 3rd respondent on the ground that condition No.6(d) of the Conditions was not fulfilled.

2.The writ petitioner and the 3rd respondent are among the 23 tenderers participated in the tender dated 25.5.2006 invited by the first respondent for selling of scrap in respect of lot Nos.15, 16 and 19. The 3rd respondent was the highest bidder who has offered Rs.40 lakhs. Next to the 3rd respondent, the petitioner herein has offered Rs.31 lakhs. Originally, the 3rd respondent's tender was not accepted on the ground that he has not enclosed the TNGST/CST Registration certificate, which is one of the conditions in the Tender Notification. However, the same was condoned, since he offered Rs.40 lakhs. Aggrieved by the said act of the respondents 1 and 2, the above writ petition has been filed.

3.The case of the petitioner is that including the tender of the 3rd respondent, altogether 7 tenders were rightly rejected on the ground that they have not enclosed the Registration certificate issued by the Commercial Tax Department, but later the respondents 1 and 2 erroneously accepted the tender of the 3rd respondent on the ground that he has offered the highest amount of Rs.40 lakhs, which is contrary to the tender conditions.

4.The learned counsel for the petitioner submitted that the petitioner is willing to improve his offer to Rs.40 lakhs to equate the offer made by the 3rd respondent, so that his tender can be accepted, since he has duly satisfied all other conditions.

5.Mr.K.M.Vijayan, learned senior counsel appearing for the 3rd respondent submitted that the Registration Certificate is not at all required, since the goods involved are exempted from commercial tax, while so imposing the condition of submitting Registration Certificate is unwarranted, considering the said fact and also the fact that the 3rd respondent offered highest amount of Rs.40 lakhs, the respondents 1 and 2 have rightly accepted the tender of the 3rd respondent and prayed for dismissal of the writ petition.

6.It is not in dispute that six other tenders were also rejected on the ground of non enclosure of the Registration certificate issued by the Commercial Tax Department, while so, it is not proper on the part of the respondents 1 and 2 whimsically accepting the tender of the 3rd respondent.

7.Considering all those facts, this Court is of the view that the 1st respondent Board can go for a fresh tender fixing the upset price at Rs.40 lakhs. In order to protect the interest of the Board, the petitioner and the 3rd respondent can be directed to deposit 25% of

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Rs.40 lakhs within a period of two weeks from today and the amount already paid by them towards EMD, if any, shall be adjusted. The learned counsel for the petitioner as well as the learned senior counsel for the 3rd respondent agrees for the said proposal. Hence, the below mentioned order is passed:

> "1.The petitioner and the 3rd respondent are directed to deposit Rs.10 lakhs within a period of two weeks from today. The amount already paid by them towards EMD, if any, shall be adjusted.
>
> 2. The 1st respondent Board is directed to call for a new tender by making advertisement in routine manner fixing the upset price of Rs.40 lakhs so that the other persons can also participate. The petitioner and the 3rd respondent are at liberty to participate in the tender without paying EMD.
>
> 3.In case, no other person or persons participate except the petitioner and the 3rd respondent, the highest amount offered among them can be considered, provided they are otherwise eligible. In such an event, the unsuccessful among them is entitled to refund of the amount deposited.
>
> 4.The 1st respondent Board is directed to complete the said exercise within a period of two months from the date of receipt of a copy of this order."

The writ petition is disposed of in the above terms. No costs. Consequently, connected M.P. is also closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Chief Financial Controller,
  Tamilnadu Electricity Board,
  NPKRR Maaligai,
  800 Anna Salai, Chennai 600 002.

2.The Chief Engineer,
  North Chennai Thermal Power Station,
  Tamilnadu Electricity Board,
  Chennai 600 120.

+1cc to M/s. Muthumani Doraisami Advocates Sr 36585

AKM (CO)
km/23.8.

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